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May 23, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Via ECFS

Re: American Cable Association ("ACA"); Notice of Ex Parte Presentation; RM-11203

Dear Ms. Dortch:

Under 47 CFR § 1.1206(b), we electronically provide this notice of an ex parte oral presentation in RM-11203. On May 17, 2005, the following individuals met with Commissioner Michael J. Copps and his senior legal advisor, Jordan Goldstein.

Jeff Abbas of the National Cable Television Cooperative
Bruce Beard of Millennium Digital Media
Dave Keefe of Atlantic Broadband
Jeff Ross of Armstrong Cable
Christopher Cinnamon and Emily Denney, both of the law firm Cinnamon Mueller

The purpose of the meeting was to discuss ACA's Petition for Rulemaking on retransmission consent and broadcast exclusivity. The presentation included a discussion of a handout summarizing ACA's Petition. We attach a copy of that handout to this letter.

Sincerely,

Emily A. Denney

cc via email:

Jordan Goldstein (Jordan.Goldstein@fcc.gov)

ex parte copps 051905

ACA Petition for Rulemaking on Retransmission Consent and Broadcast Exclusivity

On March 17, 2005, the Media Bureau released for comment ACA's Petition for Rulemaking. The comment and reply cycle concluded on May 3, 2005 and resulted in a detailed record with filings from over 60 companies, associations, and other interested parties. <u>The record contains substantial support from interest groups representing 2,500 smaller cable and telecommunications companies, over 50 individual small and medium-sized cable companies, and a small broadcast station group owner</u>.

<u>The Problem</u>: Broadcasters are targeting small and medium-sized cable companies for unprecedented fees. This conduct threatens to add <u>at least $1 billion</u> to the cost of basic cable during the next retransmission consent cycle.

The upcoming retransmission consent crisis. The record contains ample evidence of a looming retransmission consent crisis for small and medium-sized cable companies. Broadcasters are targeting these companies with cash-for-carriage demands of up to $1 per customer per month. These costs will add $2 - $5 or more per month to basic cable rates.

Broadcasters are using regulatory and contractual exclusivity to insulate retransmission consent "pricing" from market forces. The central problem with the "pricing" of retransmission consent is this: Broadcasters are demanding unprecedented fees, while at the same time using regulations and contracts to block access to lower cost, out-of-market alternatives. As a result, the "price" is <u>not</u> based on the market value of the station, but on the broadcaster's ability to exclude substitutes.

The record provides solid support for the Petition on these points. Consider the comments of <u>broadcaster</u> Block Communications, owner of five stations:

> **The problem described by ACA is very real. Because of broadcasters' escalating demands for substantial retransmission fees, the smaller cable sector, consumers, and the Commission face a looming crisis. . . the aggregate costs of retransmission consent in the smaller cable sector will likely exceed $1 billion.**

<u>The Solution</u>: Limited adjustments to retransmission consent and exclusivity regulations. The adjustments will allow <u>market-based pricing</u> of retransmission consent when broadcasters demand consideration from small and medium-sized cable companies. ACA has proposed a solution that preserves exclusivity for those stations that need it. For stations that elect retransmission consent and seek a "price," then exclusivity gives way to market-based pricing.

ACA's Petition asks for a limited "right to shop." ACA proposes small changes to the Commission's regulations that will have the following effect:

- Maintain broadcast exclusivity for stations that elect must carry or that do not seek additional consideration for retransmission consent.
- Eliminate exclusivity when a broadcaster elects retransmission consent and seeks additional consideration for carriage by a smaller cable company.
- Prohibit <u>any party</u>, including a network, from preventing a broadcast station from granting retransmission consent to a smaller cable company.

The adjustments will bring a measure of market discipline to retransmission consent pricing, thereby benefiting consumers.

ACA's proposal will <u>not</u> harm broadcasters or create "havoc" in the broadcast industry. We want to be clear what ACA's Petition is <u>not</u> requesting:

- ACA does <u>not</u> request a prohibition on additional cash payments or other consideration for retransmission consent. In limited circumstances, the proposal will allow market forces to determine the "price."
- ACA does <u>not</u> seek "wholesale change" for the broadcast television industry or the network/affiliate structure. **The proposed changes will affect at most 8% of television households**.
- The proposal will not harm localism. As the record shows, ACA members want to carry local network stations and are willing pay a reasonable price. We only ask for an unfettered market to determine the "price."

The record provides strong support on each of these points. In addition to the comments of cable interests, <u>broadcaster</u> Block Communications states:

> **As a broadcaster, we can fully validate ACA's statement that <u>no smaller cable company presents a competitive threat to our broadcast stations today.</u> In short, they need our programming more than we need their subscribers. To use exclusivity regulations to further disadvantage smaller cable companies and extract higher fees squarely conflicts with the long-standing policy basis for those regulations.**
>
> **These plans will hurt consumers, competition and localism, and are especially dangerous for smaller cable companies as they strive to remain in business amid the climate of consolidation. This is why we strongly support ACA's Petition.**

<u>ACA's proposal is deregulatory, market-based and will benefit consumers</u>. The detailed record provides strong support. We ask the Commission to consider this record and grant the Petition.